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IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN

UNITED STATES OF AMERICA)	Bay City, Michigan
)	August 4, 2022
vs.)	3:09 p.m.
)	
JUSTIN WILLIAM ZUBE,)	
)	Case No. 20-20491
Defendant.)	
)	

TRANSCRIPT OF SENTENCING
BEFORE THE HONORABLE THOMAS L. LUDINGTON
UNITED STATES DISTRICT JUDGE

APPEARANCES:

For the Government:	WILLIAM J. VAILLIENCOURT
	ANN NEE
	United States Attorney
	Eastern District of Michigan
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For the Defendant:	JEFFREY J. RUPP
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Court Reporter:	Carol M. Harrison, RMR, FCRR
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Proceedings reported by stenotype reporter.
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P R O C E E D I N G S

(At 3:09 p.m., proceedings commenced.)

(Defendant present.)

THE CLERK: United States of America versus Justin Zube, Case No. 20-20491.

THE COURT: Good afternoon, counsel. If we could have -- if we could have your introductions, please.

MR. VAILLIENCOURT: Good afternoon, Your Honor. May it please the Court, William Vaillien court appearing on behalf of the United States, and with me is Ann Nee, Assistant United States Attorney also representing the United States.

THE COURT: Good afternoon.

MR. RUPP: Good afternoon, Your Honor. Jeffrey Rupp on behalf of Mr. Zube, who is present with me.

THE COURT: Good afternoon, Mr. Rupp. Good afternoon, Mr. Zube.

THE DEFENDANT: Yes, sir.

THE COURT: We are assembled for Mr. Zube's sentencing hearing. Review of the gentleman's court records reflect the fact that a jury convicted him April the 11th of Count One of the first superceding indictment that charged him with the offense of possession of and accessing with the intent to view child pornography involving a prepubescent minor or minor who had not attained the age of 12 years of age.

It is a Class C felony under federal law. It is

15:10:45 1 punishable by a minimum term of 10 years in custody and up to
15:10:49 2 20 years in custody. Following the term of custody, the Court
15:10:53 3 is obligated to impose a supervised release term of not fewer
15:10:57 4 than five years and up to lifetime supervised release. The
15:11:02 5 Court is also accorded by statute the authority to impose a
15:11:06 6 fine of up to \$250,000.

15:11:10 7 After the trial was completed, Mr. Zube was
15:11:16 8 ultimately interviewed by Probation Officer Teeples, who does
15:11:20 9 join us here this afternoon. Good afternoon, ma'am.

15:11:22 10 **MS. TEEPLES:** Good afternoon. Thank you.

15:11:25 11 **THE COURT:** She, in turn, prepared a presentence
15:11:27 12 investigation report in June and circulated it for review.
15:11:32 13 Mr. Rupp, have you had a chance to review the presentence
15:11:34 14 report and the opportunity to review it with Mr. Zube?

15:11:39 15 **MR. RUPP:** I have, Your Honor.

15:11:41 16 **THE COURT:** Any additions or corrections to the
15:11:45 17 report? I note that there were a number of -- indeed three
15:11:49 18 objections that were made. In response, I believe Ms. Teeples
15:11:54 19 was able to locate the original conviction papers that I
15:11:59 20 thought addressed the issues fairly squarely. Your floor.

15:12:03 21 **MR. RUPP:** Judge, I received Ms. Teeples' response
15:12:06 22 including the supporting paperwork. I don't have any further
15:12:10 23 support for our objection. In speaking with Mr. Zube this
15:12:14 24 afternoon, he informs me that he had been in communication
15:12:18 25 recently with the attorney who represented him on the case in

15:12:22 1 Isabella County, at least in part that we were challenging,
15:12:24 2 because it was his belief and understanding that they'd
15:12:29 3 fashioned a sentence that would not trigger additional points
15:12:31 4 being scored in his criminal history here.

15:12:34 5 He had anticipated getting some information from that
15:12:36 6 attorney, but then that line is disconnected. I should say the
15:12:43 7 communication did not continue, so I don't have any further
15:12:47 8 information to provide to the Court.

15:12:48 9 **THE COURT:** Okay. And do you know who the attorney
15:12:51 10 was?

15:12:54 11 **THE DEFENDANT:** It was Chuck Moses out of Isabella
15:12:55 12 County. He said he was going to mail me the paperwork, and I
15:12:59 13 haven't received it from him.

15:13:00 14 **THE COURT:** Okay. Well, without the paperwork, the
15:13:06 15 paperwork that we have supports the conclusion the probation
15:13:11 16 officer arrived at, correct?

15:13:13 17 **MR. RUPP:** It does, Your Honor.

15:13:20 18 **THE COURT:** And, accordingly, the presentence report
15:13:22 19 is accurate then, at least so far as we know today.

15:13:26 20 Were there any other additions or corrections, sir?

15:13:30 21 **MR. RUPP:** Judge, besides the ones that we had
15:13:32 22 discussed in chambers, which it's my understanding that there
15:13:35 23 will be a supplemental draft to include those changes regarding
15:13:39 24 his personal history as a juvenile as well as his abuse as a
15:13:44 25 younger individual and his medical history, one thing I did

15:13:50 1 neglect to mention while we were in chambers, but I do want to
15:13:54 2 put on the record, is with regard to paragraph 14 of the report
15:13:58 3 and similar lack is.

15:14:00 4 Referenced in paragraph 14 of the report it indicates
15:14:03 5 that when he was being investigated and interviewed by the
15:14:07 6 agent in this matter, that he admitted promoting quote unquote
15:14:11 7 young girls which he went on to specify were females under the
15:14:17 8 age of 18.

15:14:18 9 He denies making that statement or promoting anything
15:14:21 10 to do with girls that were under the age of 18; and, frankly,
15:14:26 11 my reading of the discovery materials is consistent with that,
15:14:30 12 that he fashioned himself as some kind of promoter but did not
15:14:33 13 give an indication that he was doing so for minors.

15:14:45 14 **THE COURT:** Do you know the source of that
15:14:47 15 information as you sit here? I recognize you're hearing about
15:14:50 16 it for the first time.

15:14:51 17 **MS. TEEPLES:** I would have to double check the
15:14:53 18 discovery to determine where I received that from.

15:15:00 19 **THE COURT:** And are you able, in a reasonably
15:15:03 20 efficient fashion, to be able to identify what you looked at in
15:15:07 21 order to come to the conclusion that the gentleman's
15:15:11 22 recommendation is accurate?

15:15:15 23 **MR. RUPP:** To provide you a copy of it, no. I did
15:15:17 24 not bring my full file, but I have a pretty clear recollection.
15:15:21 25 It's one of the case reports that after the agents initiated

15:15:30 1 the investigation, got their search warrant, seized his
15:15:31 2 devices, there was a fair bit of time between that and when he
15:15:35 3 was ultimately indicted and arrested.

15:15:39 4 During that time there were, I believe, multiple
15:15:42 5 occasions where my client either agreed or initiated a meeting
15:15:47 6 with the -- with the agent. I believe at least on one of the
15:15:51 7 occasions they met at a McDonald's restaurant, and during that
15:15:54 8 interview he had indicated a willingness to work with the
15:15:57 9 Government in order to better his station. And it was during
15:16:02 10 one of those interviews that he was describing to them what
15:16:06 11 he -- what kind of information or connections he could provide
15:16:09 12 to the Government based on his role or position as an
15:16:14 13 influencer or promoter.

15:16:17 14 **THE COURT:** Okay.

15:16:17 15 **MR. RUPP:** But, again, that he did not specify or say
15:16:20 16 that he did so with minors.

15:16:25 17 **THE COURT:** We'll set that one objection to the side
15:16:27 18 for a moment.

15:16:29 19 Mr. Zube, you've had a chance to read the report?

15:16:34 20 **THE DEFENDANT:** Me and Mr. Rupp went through it once,
15:16:36 21 yes.

15:16:36 22 **THE COURT:** And with the exception of the objections
15:16:41 23 that he's noted, is there anything else about the report that
15:16:44 24 appeared inaccurate or incomplete?

15:16:46 25 **THE DEFENDANT:** I had made a reference to Mr. Rupp

15:16:50 1 about the listing of prior criminal history of things I was not
15:16:55 2 convicted of, certain things that I may have had dismissed or
15:17:01 3 beaten by trial, which there was things included that I took to
15:17:04 4 jury trial and was found not guilty of that are included in the
15:17:08 5 report as my prior criminal history, things that --

15:17:13 6 **THE COURT:** Well, but not your -- not your prior
15:17:16 7 criminal history in the sense of convictions?

15:17:20 8 **THE DEFENDANT:** Right.

15:17:20 9 **THE COURT:** They're required to identify any set of
15:17:24 10 circumstances where a case has been initiated, even if they are
15:17:27 11 ultimately dismissed and ultimately dismissed, for example, by
15:17:31 12 a jury. They still need to be included.

15:17:33 13 **THE DEFENDANT:** Okay. May I make one clarification
15:17:36 14 on the Mr. Moses issue?

15:17:38 15 **THE COURT:** Yes.

15:17:39 16 **THE DEFENDANT:** He said he was going to send me
15:17:41 17 paperwork. I contacted him. After he -- when he represented
15:17:45 18 me, he had contacted Mr. Rupp and got clarification that under
15:17:49 19 60 days would not affect me, which is why Isabella gave me the
15:17:52 20 deal of 59 days.

15:17:54 21 And that was similar to the failure to register with
15:17:59 22 Mr. Case out of Bay County when Ms. Ellis was working for me.
15:18:02 23 She told me that it was under 60 days, it wouldn't affect my
15:18:05 24 sentence overall, and then that's why I told Mr. Moses when he
15:18:09 25 represented me and then he contacted Mr. Rupp. And he said

15:18:13 1 that him and the prosecutor of Isabella had clarification,
15:18:15 2 which is why we agreed on the deal. Otherwise, those two
15:18:20 3 charges I would not have taken.

15:18:25 4 **THE COURT:** I think you need to talk to those other
15:18:27 5 attorneys.

15:18:28 6 **THE DEFENDANT:** Well, they told me to get those two
15:18:31 7 misdemeanors out of the way, so it wouldn't affect, you know,
15:18:34 8 trial and whatnot, so I took the plea agreements under the
15:18:37 9 understanding that that certain amount of time wouldn't affect
15:18:40 10 my scoring and otherwise it wouldn't have been.

15:18:44 11 **THE COURT:** Okay. I appreciate your point.

15:18:48 12 Let's take a brief break. We'll see if we can locate
15:18:51 13 some of the paperwork substantiating the one issue, and then
15:18:56 14 we'll return to the courtroom in approximately 15 minutes.

15:19:01 15 **THE DEFENDANT:** Sir, the clarification for the --
15:19:04 16 that paperwork you're looking for, that was from the interview
15:19:07 17 with Mr. Smith, Agent Smith.

15:19:10 18 **THE COURT:** Okay. Thank you.

15:19:11 19 **THE DEFENDANT:** Yes.

15:19:14 20 **THE COURT:** Close our record for a short period of
15:19:16 21 time, and I'll see counsel in chambers, please.

15:19:19 22 (At 3:19 p.m., break taken.)

15:59:11 23 (At 3:59 p.m., break concluded.)

15:59:49 24 **THE COURT:** We are back in session. We had begun a
15:59:52 25 conversation with respect to a couple objections related to the

15:59:56 1 presentence investigation report. Counsel have reviewed a
16:00:00 2 number of the source documents and have otherwise been able to
16:00:05 3 try to advance a response.

16:00:09 4 Mr. Rupp, if you could identify the issue, and we'll
16:00:13 5 walk our way through each one of these, please.

16:00:16 6 **MR. RUPP:** Judge, I think just going numerically, the
16:00:19 7 first issue would be with regard to paragraph 14 of the report
16:00:22 8 where it indicates as written that Mr. Zube admitted to
16:00:26 9 promoting young girls and admitting further that those females
16:00:29 10 were under age 18 on Snapchat.

16:00:32 11 We were able to locate Agent Smith's handwritten
16:00:36 12 notes from that interview, and I believe the defense and the
16:00:39 13 Government agree that an appropriate rewriting of that
16:00:45 14 statement would be that Mr. Zube admitted promoting females on
16:00:51 15 Snapchat or other social media and that during that time he
16:00:54 16 would run across underage females, but ultimately the thrust is
16:01:00 17 that he did not promote underage females.

16:01:03 18 **THE COURT:** And the Government's agreeable to the
16:01:05 19 modification.

16:01:06 20 **MR. VAILLIENCOURT:** Yes, and just as a clarification,
16:01:08 21 it was Agent Engelby's notes that reflected that so, yes, we're
16:01:12 22 agreeable to modifying that sentence to essentially read that
16:01:16 23 Zube admitted promoting girls of legal age but came across
16:01:22 24 girls that were younger while promoting.

16:01:24 25 **THE COURT:** Thank you.

16:01:25 1 **MR. RUPP:** So and jumping forward, Judge, related
16:01:29 2 language found in paragraph 114.

16:01:31 3 **THE COURT:** 114.

16:01:34 4 **MR. RUPP:** About the fourth line down, as written,
16:01:36 5 the report reads, "Defendant's conduct is more egregious as he
16:01:40 6 admittedly promoting the minor females and their illicit images
16:01:44 7 to other perpetrators online." I believe the defense and
16:01:47 8 Government agree that in light of the agent's notes that we
16:01:50 9 would simply strike that line from the report.

16:01:54 10 **MR. VAILLIENCOURT:** That's correct.

16:01:57 11 **THE COURT:** Which I believe takes us to paragraph 48?

16:02:01 12 **MR. RUPP:** I think 44 is next, Judge. That's a 2009
16:02:08 13 conviction regarding sex offender registration. I believe it's
16:02:13 14 Mr. Zube's assertion that he was only sentenced to serve three
16:02:19 15 days on that matter and that the points assessed for it should
16:02:23 16 be lower. I'll let Mr. Vaillencourt respond.

16:02:28 17 **MR. VAILLIENCOURT:** Thank you. Yes, the Probation
16:02:29 18 Department obtained from the 74th District Court in Bay City a
16:02:35 19 printout of the case history, register of actions, which
16:02:39 20 reflected -- which reflects a conviction and a sentence on
16:02:44 21 May 13 of 2010 for 60 days in jail with credit for 60 days.

16:02:52 22 So the Court records confirm the accuracy of what's
16:02:56 23 reflected in paragraph 44.

16:02:58 24 **THE COURT:** Thank you.

16:03:02 25 **MR. RUPP:** Judge, I believe the next objection was

16:03:04 1 with regard to paragraph 48, a 2019 conviction for failing to
16:03:11 2 comply with sex offender registration. I believe that's the
16:03:14 3 one that Mr. Zube asserts was dismissed based on prosecutor
16:03:18 4 error.

16:03:22 5 **MR. VAILLIENCOURT:** And, again, Your Honor, the
16:03:24 6 Probation Department obtained similar documentation from the
16:03:26 7 74th District Court indicating that there was, in fact, a
16:03:31 8 conviction and a sentence on November 5th of 2020 of 14 days in
16:03:36 9 jail with credit for 14 days. So, again, the documentation
16:03:41 10 would support the recitation in paragraph 48.

16:03:47 11 **THE COURT:** A plea-based conviction, correct?

16:03:50 12 **MR. VAILLIENCOURT:** That's correct.

16:03:52 13 **THE COURT:** Which takes us to 49.

16:03:54 14 **MR. RUPP:** And, Judge, 49 is the 2021 conviction for
16:03:57 15 aggravated assault while Mr. Zube was an inmate at the Isabella
16:04:03 16 County jail. It's his assertion that he specifically entered
16:04:09 17 into an agreement that was -- and the sentence was imposed
16:04:12 18 pursuant to that agreement that would have been under the
16:04:15 19 60-day threshold in an effort to avoid scoring additional
16:04:20 20 points in this calculation.

16:04:24 21 **MR. VAILLIENCOURT:** And, again, Your Honor, the
16:04:25 22 Probation Department obtained a copy of the judgment of
16:04:28 23 sentence from the 76th -- 76th District Court in Isabella
16:04:33 24 County reflecting that the defendant was convicted by a plea of
16:04:39 25 the charge of aggravated assault, which is a one-year

16:04:42 1 misdemeanor, and was sentenced to serve 101 days in jail with
16:04:47 2 credit for the 101 days.

16:04:51 3 So, again, the score -- or the summary as outlined in
16:04:55 4 paragraph 49 of the presentence report conforms to those
16:05:00 5 documents from the District Court.

16:05:02 6 **THE COURT:** Okay. Separately, the presentence
16:05:05 7 investigation report had an advisory line scoring. It
16:05:11 8 reflected a base offense level of 18, two-level increase as a
16:05:16 9 result of the -- a number of the images including prepubescent
16:05:20 10 minors, a four-level increase as a result of a number of the
16:05:25 11 images containing sadistic or masochistic conduct, a two-level
16:05:33 12 increase for the use of a computer, a four-level increase as a
16:05:36 13 result of there being a great -- more than 300 images but less
16:05:40 14 than 600.

16:05:43 15 His resulting offense level score was 30. Fourteen
16:05:47 16 level -- excuse me, 14 criminal history points placing him in
16:05:51 17 Category VI. As a result, the advisory guideline range was for
16:05:57 18 168 months to 210 months.

16:06:01 19 Any challenges to the scoring, sir?

16:06:04 20 **MR. RUPP:** Judge, besides those that have already
16:06:06 21 been placed on the record, I don't have any additional comment
16:06:09 22 with regard to the scoring. It does appear to be consistent
16:06:12 23 with the jury's verdict.

16:06:14 24 **THE COURT:** Any challenges to the scoring or to the
16:06:18 25 report from the Government?

16:06:20 1 **MR. VAILLIENCOURT:** No, Your Honor.

16:06:22 2 **THE COURT:** I would note I have had a chance to
16:06:24 3 review your sentencing memorandum, Mr. Rupp. We would
16:06:28 4 entertain any remarks that you would like to make in allocution
16:06:32 5 on behalf of the defendant.

16:06:34 6 **MR. RUPP:** Judge, I'll be brief because I think the
16:06:38 7 written submission really covers my take on this. I'd just
16:06:41 8 reiterate that it has been a struggle, the relationship between
16:06:46 9 Mr. Zube and I, as we've gone through this prosecution, and
16:06:50 10 it's unfortunate some of the things that I learned about him
16:06:53 11 and his past didn't come out until we were in the presentence
16:06:57 12 investigation phase.

16:07:01 13 All too much time of our -- all too much of our time
16:07:05 14 spent preparing and then litigating this I think was misplaced,
16:07:09 15 and I think now that having a clearer picture of his past, as
16:07:15 16 well as some of his mental health issues -- not that they
16:07:18 17 excuse the behavior -- help explain it and also explain the
16:07:24 18 difficulty that we experienced in our relationship.

16:07:28 19 You know, hindsight's 20/20. I don't know that it
16:07:33 20 would have affected any change, but I certainly, as his
16:07:35 21 counsel, would have approached him differently, and to the
16:07:37 22 extent that I fell short in learning those things about him, I
16:07:41 23 apologize to him.

16:07:43 24 But with all of that, Judge, and with the lengthy
16:07:48 25 history that's contained in this report, I would suggest that a

16:07:51 1 sentence at the bottom end of the guidelines is sufficient to
16:07:55 2 meet the statutory concerns and considerations without being
16:07:59 3 excessive and that for Mr. Zube's benefit there should be a
16:08:03 4 strong emphasis during his time in custody and afterwards on
16:08:08 5 appropriate counseling for his own benefit.

16:08:12 6 **THE COURT:** Thank you, sir. I appreciate your
16:08:13 7 remarks.

16:08:15 8 Mr. Zube, anything that you would add to Mr. Rupp's
16:08:19 9 remarks on your behalf?

16:08:20 10 **THE DEFENDANT:** I do agree that maybe some of our
16:08:30 11 interactions didn't benefit either us or the Court's time, and
16:08:35 12 there were some things that could been done differently.

16:08:43 13 I'm not exactly sure what -- there are some things I
16:08:46 14 wanted to bring up, but I don't know if this is the appropriate
16:08:49 15 time, I can -- if Mr. Rupp will inform me when that is.

16:08:54 16 **THE COURT:** Do they relate to sentencing?

16:08:56 17 **THE DEFENDANT:** Okay. There were some other points
16:08:57 18 that were not -- things that were not put on the record, and I
16:09:00 19 just wanted to make sure that -- my understanding is they need
16:09:04 20 to be said so that they can be brought up in an appeal. If
16:09:08 21 that's the case, partially the ineffective assistance would
16:09:13 22 definitely be one of them.

16:09:16 23 **THE COURT:** Which is often addressed on
16:09:19 24 post-conviction motions, sir.

16:09:22 25 **THE DEFENDANT:** Right. And any of those things that

16:09:23 1 would still be allowed to bring up, I would have no problem
16:09:26 2 doing that later. I just -- my understanding was I had to tell
16:09:29 3 you about certain things so that they were secured for later.
16:09:31 4 If that's not the case, then I can talk about all them with the
16:09:37 5 appeal attorney.

16:09:38 6 **THE COURT:** That particular subject that you had
16:09:39 7 referred to is often addressed as a post-conviction matter.

16:09:45 8 **THE DEFENDANT:** Okay. Then one other thing that I'm
16:09:48 9 sure you'll remember, prior to trial I tried to raise some
16:09:51 10 things. You told me to go through Mr. Rupp. I do believe I
16:09:54 11 should have been able to put in for a Frank's hearing as there
16:09:58 12 is certain proofs of at least three things that were either
16:10:04 13 direct lies or omissions in the affidavit for the search
16:10:06 14 warrant, and I believe that needs to be addressed later, too.

16:10:11 15 **THE COURT:** Okay. Anything else that you think
16:10:15 16 should be addressed in terms of your sentence, sir?

16:10:16 17 **THE DEFENDANT:** No, sir.

16:10:20 18 **THE COURT:** All right. I appreciate your remarks.
16:10:21 19 Thank you.

16:10:22 20 Government?

16:10:28 21 **MR. VAILLIENCOURT:** Well, Your Honor, three victims
16:10:29 22 have been identified in the presentence report as individuals
16:10:35 23 who were in the images possessed by Mr. Zube. They're not
16:10:39 24 present, but they did submit impact statements for the Court to
16:10:43 25 review.

16:10:44 1 The Court has heard all the testimony at trial and
16:10:47 2 had the unfortunate duty of seeing those images. The jury also
16:10:52 3 suffered the trauma of seeing those images and it was only a
16:10:56 4 small sampling of what the defendant actually possessed. But
16:10:59 5 the reaction of some of the jurors I think demonstrates the
16:11:03 6 revulsion that the defendant's conduct causes. Many turned
16:11:07 7 away in disgust; others cried.

16:11:12 8 It says nothing about the impact about the possession
16:11:14 9 of child pornography that it has on the victims. Young kids in
16:11:18 10 this case, whose abuse and molestation is preserved and
16:11:25 11 distributed for those like the defendant to view for their own
16:11:29 12 enjoyment. The impact on those kids is described in their
16:11:32 13 statements, and one of them was four years old at the time,
16:11:34 14 another was between five and 11, so defendant's conduct does
16:11:39 15 have an impact on real people.

16:11:42 16 As far as what to do with the defendant, Your Honor,
16:11:44 17 the defendant would be subjected to an enhanced maximum
16:11:48 18 sentence of 20 years if he had either images of children under
16:11:52 19 age 12 or a prior conviction related to the possession of child
16:11:57 20 pornography. In this case, the defendant has both, so I
16:12:03 21 believe that makes him unique, and that suggests that a
16:12:07 22 sentence toward the top of the guidelines is actually a more
16:12:10 23 appropriate sentence for this defendant.

16:12:12 24 We're also asking the Court to order restitution to
16:12:15 25 the victims in the amounts that they requested. We're also

16:12:19 1 asking the Court to order the forfeiture of the requested
16:12:23 2 items. There was a preliminary order of forfeiture that has
16:12:28 3 been entered. We're asking the Court to put the forfeiture
16:12:31 4 portion of the defendant's sentence on the record, and we ask
16:12:35 5 that the forfeiture language be included in the defendant's
16:12:38 6 judgment. We have provided to the Court's case manager, the
16:12:43 7 probation officer and defense counsel the proposed language, so
16:12:47 8 we'd ask the Court to do all that in imposing an appropriate
16:12:50 9 sentence in this case.

16:12:52 10 **THE COURT:** Thank you, sir.

16:12:53 11 **MR. VAILLIENCOURT:** Thank you.

16:12:53 12 **THE COURT:** I want to clarify one point particularly
16:12:57 13 with you Mr. Vaillencourt and Ms. Teeples. My original
16:13:01 14 recommendation addresses a -- recommends a single assessment
16:13:07 15 under the Justice for Victims of Trafficking Act of 5,000. Is
16:13:13 16 there updated information concerning the number of victims and
16:13:18 17 the quantification of the amount?

16:13:21 18 **MR. VAILLIENCOURT:** No, Your Honor. The only victims
16:13:22 19 that we have identified were the three victims that are
16:13:26 20 specified in the presentence report.

16:13:28 21 **THE COURT:** As the basis for that recommendation,
16:13:31 22 okay.

16:13:40 23 There really is no one in the courtroom that has
16:13:46 24 had -- has a better understanding for what the potential
16:13:49 25 consequence was of the behavior that Mr. Zube engaged here.

16:13:53 1 The gentleman over the course of 34 years has accumulated 14
16:13:58 2 criminal history points. He understands the criminal justice
16:14:01 3 system, and he understands the prohibitions of law. He
16:14:05 4 understood the gravity of his involvement in the -- with child
16:14:12 5 pornography as well as the fact that those images will remain
16:14:17 6 in perpetuity to continue hurting the victims in many of those
16:14:26 7 images.

16:14:27 8 It was a difficult case to try. It was, as pointed
16:14:31 9 out, a very difficult case for the jury. They did their job.
16:14:35 10 Nevertheless, the offense is of significant gravity and as is
16:14:43 11 the sentence to be imposed.

16:14:45 12 I would, however, on the other hand, credit a number
16:14:49 13 of points that I thought Mr. Rupp made in allocution, and that
16:14:55 14 is the fact that we learned more about Mr. Zube, his personal
16:14:59 15 history, some of his personal challenges, during the course of
16:15:04 16 his 34 years.

16:15:09 17 There -- it was, in many respects, not easy growing
16:15:12 18 up. He faced difficult challenges during that period of time
16:15:19 19 that made it difficult for him to maintain his complete
16:15:23 20 attention to his behavior, and we will, as a result of that,
16:15:27 21 make recommendations to the Bureau of Prisons to hopefully
16:15:31 22 provide him support.

16:15:34 23 I would note that he does have the support of his
16:15:40 24 father. He's been here during the course of the trial, as well
16:15:45 25 as each of the hearings. You are lucky in that respect,

16:15:50 1 Mr. Zube, to continue to have the support of your dad.

16:15:56 2 We have reviewed the Sentencing Reform Act. I've
16:15:57 3 briefly highlighted a number of the 3553(a) factors important
16:16:02 4 to the Court's assessment. We would hereby commit the
16:16:07 5 gentleman to the custody of the United States Bureau of Prisons
16:16:08 6 for a term of 180 months.

16:16:11 7 Upon his release from custody, he is to be placed on
16:16:13 8 supervised release for a term of five years. He's ordered to
16:16:17 9 pay the statutory assessment of \$100. He is also ordered to
16:16:21 10 pay the Justice for Victims of Trafficking Act assessment of
16:16:26 11 \$5,000. That's due presently. Drug testing is ordered as is
16:16:31 12 required by statute.

16:16:33 13 Mr. Zube is also to cooperate with the collection of
16:16:36 14 a DNA sample as directed by his probation officer. While he's
16:16:41 15 on supervised release he is to abide by the standard conditions
16:16:45 16 of supervised release that have been adopted by the United
16:16:48 17 States District Court for the Eastern District of Michigan.
16:16:51 18 He's also to comply with the following additional special
16:16:54 19 conditions:

16:16:55 20 He is to comply with the requirements of the Sex
16:16:57 21 Offender Registration and Notification Act. He is to
16:17:02 22 successfully complete any sex offender diagnostic evaluation,
16:17:04 23 treatment or counseling program as directed by his probation
16:17:08 24 officer. Reports pertaining to the assessments and treatment
16:17:12 25 will be provided to his probation officer. He is also to

16:17:16 1 contribute financially to the expense of same to the extent of
16:17:21 2 his ability as determined by his probation officer.

16:17:23 3 He is not to have direct contact with any child that
16:17:26 4 he knows or has reason to know is under the age of 18,
16:17:30 5 including his own children, without the permission of his
16:17:33 6 probation officer. If he does have direct contact with any
16:17:37 7 child that would fall into such category, including his own
16:17:41 8 children, without the permission of his probation officer, he
16:17:44 9 is to report it within 24 hours of the occasion.

16:17:48 10 He is to participate in a computer internet
16:17:50 11 monitoring program administered by the United States Probation
16:17:53 12 Department. He must abide by the computer internet monitoring
16:17:58 13 program participation agreement that is in effect at the time
16:18:00 14 of supervision and comply with any amendments to the program
16:18:04 15 during the term of supervision.

16:18:06 16 He is to submit his person, residence, office,
16:18:09 17 vehicle, paper, business -- papers, business or place of
16:18:13 18 employment and any property that is under his control to a
16:18:17 19 search. The search is to be conducted by a United States
16:18:20 20 probation officer at a reasonable time, in a reasonable manner,
16:18:24 21 based upon a reasonable suspicion of contraband or evidence of
16:18:27 22 a violation of a condition of release.

16:18:30 23 His failure to submit to the search may constitute
16:18:33 24 independent grounds for revocation of his terms of supervised
16:18:36 25 release. His failure to submit -- excuse me -- he is also to

16:18:41 1 warn anyone that he is residing with that he's amenable to a
16:18:44 2 search on those terms.

16:18:45 3 He is to notify anyone he may be dating or intending
16:18:50 4 to marry with a minor child under the age of 18 of the fact of
16:18:53 5 his conviction. He is not to purchase, sell, view or possess
16:18:56 6 images in any form of media or live venue that depict
16:19:02 7 pornography, sexually explicit conduct, child erotica or child
16:19:07 8 nudity. He is not to patronize any place where such material
16:19:11 9 is available.

16:19:11 10 He is also to have all of his residences preapproved
16:19:14 11 by the Probation Department. He must not provide care or live
16:19:17 12 in a residence where children under the age of 18 or adults
16:19:21 13 with disabilities also reside without prior approval of his
16:19:25 14 probation officer.

16:19:27 15 He is to submit to periodic polygraph testing at the
16:19:32 16 direction of his probation officer as a means to insure
16:19:35 17 compliance with the requirements of supervision or treatment.
16:19:39 18 No violation proceedings will arise solely on the basis of the
16:19:40 19 polygraph examination. Again, he's also to contribute
16:19:47 20 financially to the expense of the polygraph examinations to the
16:19:50 21 extent of his financial capability as determined by his
16:19:54 22 probation officer.

16:19:55 23 Finally, he is to participate in a mental health
16:19:58 24 treatment program and follow the rules and regulations of that
16:20:01 25 program. His probation officer, in consultation with the

16:20:05 1 treatment provider, will supervise -- will supervise his
16:20:10 2 participation in the program.

16:20:14 3 There were also forfeiture provisions identifying a
16:20:20 4 number of the electronic information obtained from Mr. Zube. I
16:20:27 5 believe that's been reduced to judgment. Am I correct in my
16:20:31 6 understanding?

16:20:33 7 **MR. VAILLIENCOURT:** Well, I know that a preliminary
16:20:34 8 order was entered. I'm not sure that I've seen an actual
16:20:39 9 judgment entered, a final judgment.

16:20:41 10 **THE COURT:** We'll include the reference in the
16:20:44 11 judgment of sentence to the forfeiture judgment.

16:20:48 12 **MR. VAILLIENCOURT:** Thank you.

16:20:49 13 **THE COURT:** Any questions concerning the sentence or
16:20:53 14 objections that we've not given earlier attention to, Mr. Rupp?

16:20:58 15 **MR. RUPP:** Not that I'm aware of, Judge.

16:21:00 16 **MR. VAILLIENCOURT:** Yes. There were three victims in
16:21:02 17 this case that made restitution requests. Pia, who is in the
16:21:08 18 "Sweet Sugar" series, requested \$5,000 restitution.

16:21:13 19 Sarah from "Marineland1" series requested \$10,000.

16:21:18 20 And then the individual in the "Aprilblonde" series
16:21:22 21 requested restitution of anywhere between 3,000 and \$20,000 in
16:21:27 22 restitution.

16:21:28 23 I believe those figures would be appropriate. Under
16:21:31 24 the statute, the Court's required to order at least \$3,000. As
16:21:37 25 I've indicated, one's requested between 3 and 20; Pia requested

16:21:41 1 5,000; and Sarah requested 10,000. We would ask the Court to
16:21:45 2 order restitution in those amounts.

16:21:50 3 **THE COURT:** You're kind of closing a loop on a
16:21:52 4 question I had earlier. Because those have been made through
16:22:00 5 your office, but I have not actually seen any of those myself.
16:22:03 6 There's reference to them in the context of the report, but
16:22:08 7 before I make a finding, I think I need to at least read the
16:22:11 8 materials and understand the basis for the request.

16:22:15 9 **MR. VAILLIENCOURT:** All the documentation was
16:22:17 10 provided to probation, you know, with all the support, and it
16:22:20 11 was also provided to counsel, and they were -- they were
16:22:25 12 included in the report, so -- but if the Court wants, I mean,
16:22:28 13 we'll have probation get you those additional documentation.
16:22:31 14 We just ask that those amounts be ordered and included in the
16:22:35 15 judgment.

16:22:38 16 **THE COURT:** And to the extent that that information
16:22:40 17 is now available, we also have 90 days under statute in order
16:22:45 18 to make a determination on the restitution requests. Because
16:22:49 19 that's been identified, I'll look at the source documentation
16:22:53 20 that's available and reach a conclusion on the restitution
16:22:56 21 amounts.

16:22:56 22 **MR. VAILLIENCOURT:** Thank you, Your Honor.

16:22:57 23 **THE COURT:** Any additional business,
16:22:58 24 Mr. Vaillencourt, from the Government's perspective?

16:23:01 25 **MR. VAILLIENCOURT:** No, Your Honor.

16:23:02 1 **THE COURT:** One thing I want to be sure that Mr. Zube
16:23:04 2 knows is that he's entitled to seek an appeal and a review of
16:23:10 3 the decisions that have been made during the course of his
16:23:13 4 experience hear with the trial court. Nevertheless, in order
16:23:18 5 for that to be timely, he'll have to have the claim of appeal
16:23:20 6 filed with the clerk of court within 14 days.

16:23:23 7 Mr. Rupp, have you had a chance to talk with Mr. Zube
16:23:26 8 concerning that subject?

16:23:27 9 **MR. RUPP:** Repeatedly and at length.

16:23:29 10 **THE COURT:** Okay. Good luck, Mr. Zube.

16:23:32 11 Record's closed.

16:23:32 12 (At 4:23 p.m., court recessed.)

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16:23:32 15

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16 C E R T I F I C A T E

17 I certify that the foregoing is a correct transcript
18 from the proceedings in the above-entitled matter.

19

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21 Date: 11-14-2022

22

23

24

25

Carol M. Harrison

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